



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

July 29, 1963

Mr. Jack Ross, Chairman  
Board of Pardons and Paroles  
Box 2176  
Capitol Station  
Austin, Texas

Opinion No. C- 115

Re: Whether House Bill 395,  
Acts of the 58th Legisla-  
ture, Regular Session,  
1963, Chapter 327, page  
857, when in effect, will  
govern the age limits set  
for parole officers, or  
whether the provisions of  
Article 781d, Section 28,  
Vernon's Code of Criminal  
Procedure, will apply as  
to age limits of such  
officers.

Dear Mr. Ross:

You have requested an opinion from this office upon  
the question of whether:

" . . . H. B. 395, when in effect, will  
govern the age limits set for parole officers  
employed by this department, or should this  
Board continue its compliance with Article 781d,  
Section 28, C.C.P."

Section 28 of Article 781d, Vernon's Code of Criminal  
Procedure, provides in part that:

" . . . no person may be employed as a  
parole officer or supervisor, or be responsi-  
ble for the investigations, surveillance, or  
supervision of persons on parole, unless he  
meets the following qualifications together  
with any other qualifications that may be  
specified by the Director of the Division,  
with the approval of the Board of Pardons  
and Paroles: 26 to 55 years of age, . . ."  
(Emphasis added)

Section 2 of House Bill 395, Acts of the 58th Legisla-  
ture, Regular Session, 1963, Chapter 327, page 857, provides  
that:

"No agency, board, commission, depart-  
ment, or institution of the government of the

State of Texas, nor any political subdivision of the State of Texas, shall establish a maximum age under sixty-five (65) years nor a minimum age over twenty-one (21) years for employment, nor shall any person who is a citizen of this State be denied employment by any such agency, board, commission, department or institution or any political subdivision of the State of Texas solely because of age; provided, however, nothing in this Act shall be construed to prevent the imposition of minimum and maximum age restrictions for law enforcement peace officers or for fire-fighters; provided, further, that the provisions of this Act shall not apply to institutions of higher education with established retirement programs." (Emphasis added)

House Bill 395 makes no reference to Article 78ld nor does House Bill 395 contain any repealing clause within its provisions.

For House Bill 395 to act as a repeal of Article 78ld, there being no express or general clause found in House Bill 395, such a repeal would have to be by implication. 39 Tex. Jur. 137 Statutes, Sec. 73. In addition it is stated in 39 Tex. Jur. 140 Statutes, Sec. 75, that:

"... the repeal of statutes by implication is never favored or presumed. The two acts will persist unless the conflicting provisions are so antagonistic and repugnant that both cannot stand. Where there is no express repeal, the presumption is that in enacting a new law the Legislature intended the old statute to remain in operation.

"Accordingly, a repeal by implication will be adjudged only when such result is inevitable or was plainly intended by the Legislature. If by any reasonable construction two acts or statutory provisions can be reconciled and so construed that both may stand, one will not be held to repeal the other. Especially where the older law is particular and is expressed in negative terms, and the later statute is general, a construction will be sought which harmonizes them and leaves both in concurrent operation. . . ."

In view of the foregoing it is to be noted that House Bill 395 merely provides that no agency, board, commission, department, or institution of the government of the State of Texas

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shall establish a maximum age under sixty-five (65) nor a minimum age over twenty-one (21) for employment. However, the age restrictions placed upon parole officers employed by the Board of Pardons and Paroles, as set forth in Article 78ld, is a restriction placed by the Legislature of the State of Texas rather than by an agency, board, commission, department, or institution of the government of the State of Texas.

Consequently, we are of the opinion that the provisions of House Bill 395 do not act as a repeal of Section 28 of Article 78ld, Code of Criminal Procedure enacted by the Legislature whereby the Legislature set certain age restrictions as to these employees.

#### S U M M A R Y

The provisions of House Bill 395, Acts of the 58th Legislature, 1963, Chapter 327, page 857, do not act as a repeal of Article 78ld, Section 28, Vernon's Code of Criminal Procedure, and therefore the provisions of Section 28 of Article 78ld, rather than the provisions of House Bill 395, control as to the age restriction placed upon the employment of parole officers by the Board of Pardons and Paroles.

Yours very truly,

WAGGONER CARR  
Attorney General

By *Pat Bailey*  
Pat Bailey  
Assistant

PB:wb:zt

APPROVED:

OPINION COMMITTEE  
W. V. Geppert, Chairman

C. L. Snow, Jr.  
Scott Garrison  
Paul Phy  
Bill Allen

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Stanton Stone